IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 411 of 2002
with
CIVIL APPLICATION No. 3691 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VIRSINGBHAI NAGJIBHAI MAKWANA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 411 of 2002
MR PJ VYAS for Petitioner No. 1-6
MS SONAL VYAS, A.G.P. for Respondent No. 1
MR MM TIRMIZI for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/07/2002

ORAL JUDGEMENT

1. The petitioners, who claimed to be the tenants, have filed this petition and challenged the impugned

order dated 5.12.2001 (Annexure : D), passed by the Deputy Collector, Dahod, whereby he corrected his mistake in passing the impugned order dated 27.11.2001 (Annexure:C) and cancelled it on the ground that when the matter is sub-judice before the Civil Court then he had no jurisdiction to go beyond the jurisdiction of the Civil Court and pass any order.

2. On 15.1.2002 this Court (R.M.Doshit, J.) straightway admitted this petition and issued notice as to interim relief and hearing of Rule was made returnable on 6.3.2002 and pending the petition ad.interim relief in terms of Para : 10(C) was granted.

3. Thereafter the matter was adjourned from time to time by other Courts. When this matter was placed before this Court on 18.6.2002 the above mentioned Civil Application No.3691 of 2002 filed on 15.2.2002 was already placed for orders on 15.7.2002 for vacating the ex-parte ad.interim relief granted in favour of the present petitioners. The copy of the same was served upon the Counsel for the petitioner on that very day i.e. on 9.5.2002. As per the provision under Article 226(3) of the Constitution of India, ad.interim relief granted earlier stands automatically vacated. Be that as it may. When the ad.interim relief stood automatically vacated then this main petition is required to be heard and accordingly at the joint request of the learned Counsel for the parties the matter is heard today and disposed of by this order.

4. Learned Counsel Shri Vyas for the petitioner vehemently submitted that the Deputy Collector had no power to review his own order dated 8.11.2001 which was dispatched on 27.11.2001 (Annexure : C). Therefore, the impugned order dated 5.12.2001 be quashed and set aside.

5. It may be stated that the entry was made by Talati on 16.1.1999 (Annexure : A) in favour of the respondent No.2 against which the Appeal No.28 of 1999 was filed by the present petitioner before the Deputy Collector. Initially the same was allowed by Shri R.M.Pagi, Deputy Collector, Dahod and the entry dated 16.1.1999 made in the Register on the basis of Will was cancelled. However, after the said order (Annexure :C) was dispatched on 27.11.2001 the same Dy. Collector Shri Pagi, on his own, realised that when the matter was sub-judice before the Civil Court in a Civil Suit filed by the present respondent No.2, therefore, he had no jurisdiction to entertain the Appeal, as the said Appeal was against the Will executed by the deceased and

corrected his own mistake and cancelled his earlier order dated 27.11.2001 (Annexure : C), by the impugned order (Annexure : D). Under the circumstances, I am of the considered opinion that when the Authority which has passed the order, realising its mistake that it had no jurisdiction to entertain the Appeal, and correcting the mistake by the subsequent impugned order (Annexure:D) then it can not be said that the Deputy Collector, Dahod by passing the impugned order dated 5.12.2001 at Annexure : D cancelling his earlier order dated 27.12.2001 (Annexure : C), committed any error which calls for the interference of this Court in its writ jurisdiction.

6. Shri Vyas, learned Counsel for the petitioner then contended that the impugned order at Annexure : D was passed by the Deputy Collector without affording an opportunity of hearing to the petitioners. Therefore, the same should be quashed and set aside. He submitted that rightly or wrongly once the Deputy Collector passed the impugned order (Annexure : C) then it was not open to him to cancel his order without hearing the petitioners. It is true that in the instant case the petitioners were not heard by the Deputy Collector while passing the impugned order at Annexure : D on 5.12.2001, in my considered opinion even if the opportunity of hearing was extended to the petitioner then also no other view was possible then the view taken by the Dy. Collector in his impugned order Annexure : D. Thus, extending an opportunity of hearing in this case would have been exercise in futility.

7. Except the aforesaid submissions no other submission was made.

8. Before parting, I must state that Shri Tirmiji, learned Counsel appearing for the respondent No.2 submitted that the respondent No.2 had filed Revision Application against the impugned order (Annexure : C) with the abundant caution that in case if this Court allows the petition then she would not be remediless. Shri Tirmiji has also raised preliminary objection regarding alternative remedy available to the petitioners against the impugned order at Annexure : D by way of an Appeal before the Special Secretary. However, I am not inclined to consider that submission because, as stated earlier, I am of the considered opinion that the Deputy Collector, Dahod, while correcting the mistake has not committed any error in passing the impugned order at Annexure : D.

9. This petition is labelled as petition under

Article 226/227 of the Constitution of India, but strictly speaking it is a petition under Article 227 of the Constitution of India, the scope of which is very narrow and limited.

10. In the instant case when no apparent injustice is done to the petitioners then I am of the considered opinion that the impugned order at Annexure : D passed by the Authority is not required to be interfered by this Court in its supervisory jurisdiction. The matter is already sub-judice between the parties before the Civil Court and the parties must abide by the decision of the Civil Court.

11. In view of the above discussion this petition fails and is dismissed. However, there shall be no order as to costs.

12. Once the main petition is dismissed, the Civil Application for vacating the interim relief does not survive any more. The ad.interim relief granted earlier stood already vacated in view of the provision of Article 226 (3) of the Constitution of India. Hence, no order on this Civil Application and accordingly it is disposed of.

sd/-

Date : July 23, 2002 (B.J.Shethna, J.)

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